



State of Washington
REPORT OF EXAMINATION
FOR TRUST WATER RIGHT

File NR CS4-01279sb5c
WR Doc ID 4721251

Changed Place of Use
Changed Purpose of Use

PRIORITY DATE
June 5, 1886

WATER RIGHT NUMBER
CS4-01279sb5c

BEGIN TRUST TERM
Upon approval

END TRUST TERM
Permanent

WATER RIGHT OWNER
FRED TALERICO
1711 STATE ROUTE 970
CLE ELUM WA 98922

APPLICANT/AGENT FOR OWNER
CENTRAL CASCADES LAND CO
C/O ANNE WATANABE
PO BOX 687
ROSLYN WA 98941

Purpose and Quantity

Trust water right for the purpose of instream flow and water banking to offset the consumptive use associated with new groundwater uses in the Yakima Basin, with quantities allocated to primary and second reaches in the following manner.

Period	Primary Reach		Secondary Reach	
	Flow (cfs)	Acre-feet	Flow (cfs)	Acre-feet
06/01 -06/30	0.11		0.02	1.10
07/01 -07/31	0.11		0.04	2.10
08/01 -08/31	0.11		0.03	1.60
09/01 -09/30	0.11		0.02	1.20
ANNUAL TOTAL		18.36		6.00

"Primary reach" means that portion of a water body that benefits from both the former consumptive use and former return flow waters of a water right. "Secondary reach" means that portion of a water body that benefits only from the former consumptive portion of a water right.

Trust Water Right Place of Use

WATERBODY	TRIBUTARY TO	COUNTY			WATER RESOURCE INVENTORY AREA			
Yakima River	Columbia River	Kittitas			39-Upper Yakima			
REACH	WATERBODY	RIVER MI	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Begin Primary Reach	Yakima River	181.8	20N	15E	35	NWNE	47.1877	-120.9270
End Primary Reach	Yakima River	176.1	19N	16E	3	NWSW	47.1673	-120.8352
Begin Secondary Reach	Yakima River	176.1	19N	16E	3	NWSW	47.1673	-120.8352
End Secondary Reach	Yakima River	0.0	24N	9E	28		46.2493	-119.2451

Latitude/Longitude Coordinates may approximate reach segments. Datum: NAD83/WGS84

Trust Water Right Provisions

The real property to which the water rights were originally appurtenant shall not be irrigated from any source of supply unless and until another valid water right is transferred to the place of use.

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts and Decisions

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not impair existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-01279sb5c, be approved subject to existing rights and the provisions specified above.

Your Right To Appeal

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this 3 day of October, 2011.

Melissa Downes
Melissa Downes, Acting Section Manager
Water Resources Program/CRO
Department of Ecology

INVESTIGATOR'S REPORT

Buck Smith, LG, LHG, Senior Hydrogeologist
Department of Ecology - Water Resources Program
Water Right Control Number CS4-01279sb5c

BACKGROUND

Description and Purpose of the Proposed Change

On February 17, 2011, Central Cascades Land Company, Inc. filed an application to enter an adjudicated water right into the Trust Water Right Program. The subject right is Claim No. 01279 in the Yakima Superior Court matter of the *State Department of Ecology v. James J. Acquavella, et al (Acquavella)*, within Subbasin No. 5 (Elk Heights). The application for change was accepted and assigned Control No. CS4-01279sb5c.

This report of examination addresses the applicant's request to transfer 0.11 cubic feet per second (cfs) and 21 acre-feet per year (ac-ft/yr) to the Trust Water Right Program (TWRP) for instream flow and water banking purposes to mitigate for new withdrawals of groundwater in accordance with WAC 173-539A.

The historical place of use is approximately two miles east of Cle Elum, in Kittitas County. The physical address of the property is 1711 State Route 970. Upon approval of the requested change, the subject water right will no longer be used on the property.

Attributes of the Existing Water Right and Proposed Change

Attributes	Existing Right	Proposed Change
Right Holder's Name	Fred S. Talerico	Trust Water Right Program
Applicant	Central Cascades Land Company, Inc.	
Priority Date	June 5, 1886	Same
Source	Yakima River (Younger Ditch)	Yakima River
Purpose of Use	Irrigation supply (sprinkler and flood)	Instream flow & water banking to offset the consumptive use associated with new groundwater uses in the Yakima Basin
Instantaneous Quantity	0.11 cfs (and 0.125 cfs for conveyance loss)	Primary Reach: 0.11 cfs Secondary Reach: June - 0.02 cfs July - 0.04 cfs August - 0.03 cfs September - 0.02 cfs
Annual Quantity	21.0 ac-ft/yr	21.0 ac-ft/yr of which 6.0 ac-ft/yr is consumptive use
Period of Use	April 20 - September 30	June 1 - September 30
Place of Use	Beginning at the north quarter corner of Section 31, T. 20 N., R 16 E., W.M.; thence East along the north section line of said Section 31, 305 feet; thence South 0° 32' 39" West 487.70 feet to the true point of beginning; thence continuing South 0° 32' 39" West 218.36 feet; thence South 89° 47' 15" West 787.79 feet; thence North 0° 32' 19" East 334.32 feet; thence South 81° 48' 57" East 794.88 feet to the point of beginning (parcel No. 155035)	Yakima River Primary Reach: River Mile (RM) 181.8 to RM 176.1 Secondary Reach: RM 176.1 to the confluence with the Columbia River

Legal Requirements for the Proposed Change

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

A trust water right in the Yakima Basin is governed by RCW 90.38, and water banking is governed by RCW 90.42.100. RCW 90.38.040(1) states that all trust water rights acquired by the Department of Ecology shall be placed in the Yakima River Basin Trust Water Right Program to be managed by Ecology. Ecology shall issue a Certificate of Water Right in the name of the State of Washington for each trust water right it acquires.

The Washington State Supreme Court held that Ecology must make a tentative determination of the extent and validity of the right to be changed (*R. D. Merrill v. PCHB and Okanagan Wilderness League v. Town of Twisp*).

This application qualifies for priority processing under WAC 173-152-050(2)(c) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment. In the context of water banking under the Upper Kittitas County ground water rule, WAC 173-539A-060 provides that Ecology may process a pending application to place a water right in trust if and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. The trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

Public Notice

A public notice of the application must be published in a local newspaper once a week for two consecutive weeks (RCW 90.03.280). Public notice of the subject application was published in the Ellensburg *Daily Record* on April 20 and 27, 2011.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (1) It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies.
- (2) It is a groundwater right application for more than 2,250 gallons per minute.
- (3) It is an application that, in combination with other water right applications for the same project, collectively exceeds the amounts above.
- (4) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
- (5) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

In considering this application, the investigation included, but was not limited to, research and/or review of:

- Yakima County Superior Court *Acquavella* Court Claim No. 01279
- Yakima County Superior Court Conditional Final Order Subbasin No. 5 (Elk Heights)
- Yakima County Superior Court Report of Referee Subbasin No. 5 (Elk Heights)
- Yakima County Superior Court Supplemental Report of Referee Subbasin No. 5 (Elk Heights)
- Younger Ditch Easement and Agreement
- Water Right Change Application No. CS4-01279CTCL@1 (KIT-05-01) and associated documents including Kittitas County Water Conservancy Board Report of Examination and Record of Decision dated October 18, 2005; and Report of Examination and Record of Decision dated June 20, 2006; Letter dated December 13, 2005, from Daniel Haller (DOE) to Chery Varnum (Kittitas County Water Conservancy Board); Letter dated August 23, 2006, from Thomas Tebb (DOE) to Rogalski-Walgren Inc.
- Adjacent water rights and Court Claims in the vicinity including information from Water Right Change Application CS4-05671CTCLsb5@3 (KIT-08-02) and associated documents
- Affidavit of Fred S. Talerico
- Deeds
- Dated Aerial Photos (2001-2006, 2009) and Landsat Images (2003-2009)

- Soils Map
- Photos of the irrigation delivery system and appurtenant property
- Water and Natural Resource Group Technical Memorandum on Beneficial Use and Consumptive Use Calculations
- Draft Trust Water Agreement between Ecology and Yakima River Mitigation Water Services LLC
- Ecology Records
- Correspondence and communication with water right holder Fred S. Talerico and Ecology staff
- State Water Code, administrative rules, regulations and policies

History of Water Use

Fred S. Talerico was confirmed a water right with a priority date of June 5, 1886, under Court Claim No. 01279 in the Conditional Final Order (CFO) for Subbasin No. 5 (Elk Heights) issued on February 8, 2001, by the Yakima County Superior Court in *Acquavella*. The CFO confirmed the right with the following attributes:

- Diversion of 0.11 cfs and 21 ac-ft/yr from Younger Ditch (Yakima River) for the irrigation of 3.5 acres from April 20 through September 30 of each year, with 0.125 cfs for conveyance loss.

The *Acquavella* Supplemental Report of Referee stated that Court Claim No. 01279 was filed by GRM Ranch in 1981; and that Mr. Talerico purchased Tract A of the GRM property in 1973 and the adjacent Tract B of the GRM property in 1976. Tract A is adjacent to and north of Tract B and was sold to Mr. Talerico's parents, Frank and Doris Talerico; and is the real property to which the adjacent Court Claim No. 05671 was historically appurtenant.¹

Tract B of the GRM property is 5 acres in size and is the real property to which the subject water right, as confirmed to Mr. Talerico under Claim No. 01279, is appurtenant. Mr. Talerico indicated that he has irrigated this land since 1976. Mr. Talerico was joined as a party to Claim No. 01279 on May 26, 1998. The February 8, 2001, CFO for Subbasin 5 (Elk Heights) confirmed Mr. Talerico's Court Claim (No. 01279) to irrigate 3.5 of the 5.0 acres with 0.11 cfs and 21 ac-ft/yr of Yakima River water diverted through the Younger Ditch.

¹ The water rights confirmed under Claim No. 05671 were placed into the TWRP under Temporary Trust Water Right No. CS4-05671CTCL@1 in June 2006 for the 2006 irrigation season and remained in the trust program until 2010, when a temporary beneficial use was authorized by Yakima County Superior Court Order Pendente Lite dated September 9, 2010. Since 2006, the land appurtenant to Claim No. 05671 has been fallow.

During the proceedings for Subbasin 5 and other Younger Ditch users, Ecology expressed a concern that relinquishment or temporary nonuse of individual water rights over time could diminish the conveyance water in Younger Ditch to a point where the remaining users of the ditch could not obtain their authorized water. As such, the Referee incorporated into each of the recommended Younger Ditch water rights, including Claim No. 01279, the following provision:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cubic feet per second (cfs).

Court Claim No. 01279 includes a quantity of 0.125 cfs for conveyance loss which will revert accordingly to the remaining Younger Ditch water right holders as a result of this change application.

The Supplemental Report of Referee also concluded that stock animals on the property drink from an excavated pond or a small stream entering the property from the west; and therefore Claim No. 01279 has a non-diversionary stock water right and is subject to the non-diversionary stock water stipulation described in the Report of Referee.²

² The parties stipulated to the following in relation to "non-diversionary" stock and wildlife watering use with regards to Subbasin No.5: "1) Waters in natural watercourses in the subbasin shall be retained when naturally available, in an amount not to exceed 0.25 cubic feet per second (cfs), for stock water uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for livestock. Retention of such water shall be deemed senior (or first) in priority, regardless of other rights confirmed in this cause. Regulations of these watercourses by the plaintiff shall be consistent with such retention requirements. 2) Waters in natural watercourses in the subbasin shall be retained when naturally available, in an amount not to exceed 0.25 cfs, for wildlife watering uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for wildlife. Retention of such water shall be deemed senior (or first) in priority, regardless of other rights confirmed in this cause. Regulations of these watercourses by the plaintiff shall be consistent with such retention requirements. 3) Waters in naturally occurring ponds and springs (with no surface connection to a stream) in the subbasin shall be retained for stock water uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for livestock. Said uses embody entitlements to a level in the water bodies sufficient to provide water for animals drinking directly therefrom while ranging on riparian lands, and with the same priority as provided in paragraph 1. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements. 4) Waters in naturally occurring ponds and springs (with no surface connection to a stream) in the subbasin shall be retained for wildlife watering uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for wildlife. Said uses embody entitlements to a level in the water bodies sufficient to provide water for wildlife drinking directly therefrom while ranging on riparian lands, and with the same priority as provided in paragraph 2. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements. 5) Nothing in this stipulation mandates that any lands, associated with water rights or water retention as provided herein, shall be reserved for wildlife purposes."

This claim was previously the subject of Water Right Change Application No. CS4-01279CTCL@1 (KITT-05-01) submitted to the Kittitas County Water Conservancy Board (KCWCB) by applicant Rogalski-Wallgren, Inc., to change a portion of Claim No. 01279 to a new point of withdrawal, add a new place of use and change the purpose of use of the portion transferred from irrigation to domestic supply and irrigation. The new point of withdrawal was to be a shallow groundwater well in hydraulic continuity with the Yakima River. On October 18, 2005, the KCWCB issued a Report of Examination (ROE) and Record of Decision (ROD) recommending that Ecology approve Change Application No. CS4-01279CTCL@1 (KITT-05-01) for a quantity of 0.05 cfs and 10 ac-ft/yr (6.79 ac-ft/yr consumptive and 3.21 ac-ft/yr for non-consumptive).

By letter dated December 13, 2005, from Daniel Haller (Ecology) to Chery Varnum (KCWCB), Ecology recommended that the KCWCB withdraw its October 18, 2005, decision to supplement the record. The KCWCB withdrew its decision and issued another ROD and ROE on June 20, 2006. By letter dated August 23, 2006, from Thomas Tebb (Ecology) to Rogalski-Walgren Inc., Ecology reversed and denied the KCWCB's June 20, 2006 decision, indicating that Ecology's review time had expired before inadequacies with the KCWCB's evaluation could be addressed. Many of Ecology's concerns with the KCWCB's 2005 and 2006 decisions related to the new proposed use and new point of withdrawal specific to that change application. Other issues pertained to the extent and validity of Mr. Talerico's beneficial use of Claim No. 01279. No parties appealed Ecology's 2006 decision and the water under Claim No. 01279 remained appurtenant to Mr. Talerico's property.

In support of this change request, Gene St. Godard of the Water and Natural Resources Group, Inc. (WNR Group) completed (in October 2010) a Technical Memorandum of the Consumptive Use Analysis for Claim No. 01279. Mr. St. Godard has done several site visits over the past two years and has observed the historic point of diversion from Younger Ditch, the irrigation delivery system, property features, and stock animal use.

Mr. Talerico has primarily irrigated his property for pasture/turf for stock animals. The stock animals are enclosed in the area in which the irrigation occurs. Since at least 1999, Mr. Talerico has had an average of 2-4 horses on the property.

The existing irrigation system consists of both gravity-flow flood irrigation and sprinkler systems. Approximately two acres of the property are irrigated via a gravity flow diversion consisting of a 3-inch, 75-foot plastic pipe placed directly into the Younger Ditch. This pipe is connected to a one-inch plastic pipe that flood irrigates the western portion and the northeastern portion of the property. The sprinkler irrigation consists of a one-horsepower pump which withdraws water from Younger Ditch into a 300-foot, 1.5-inch diameter pipe. This pipe has seven to eight sprinkler nozzles, with only five used at any one time. In addition, a 100-foot garden hose is attached to the end of the 1.5-inch pipe, which also operated five Rainbird sprinklers.

The porous sands and gravels at the site result in increased rate of return flows to the shallow aquifer, thus requiring more water to be applied to the crop in order to meet the irrigation requirements. The site is underlain by Patnish-Mippon-Myzel complex soils (Map unit 208 in Kittitas NRCS Soil Survey, 2010). These soils are typically found in flood plains and form a 0 to 3 percent slope. The soils are listed as moderately well-drained and have a moderately high to high capacity to transmit water (0.57 to 1.98 inches per hour). Their available water holding capacity is very low (about 1.9 inches). These soil conditions require a large water duty to irrigate the lands for pasture.

On-site conditions and aerial photos for the years 2001-2006 and 2009 confirmed that Court Claim No. 01279 was exercised during each of these years. The adjacent property that was appurtenant to Court Claim 05671 and which is north of the Talerico property appears in the same aerial photos. Because of temporary changes (to trust) made to Claim No. 05671, the land previously appurtenant to Claim No. 05671 has not been irrigated since 2006 and has remained fallow. As such, the fallowed adjacent property offered a good visual comparison to Mr. Talerico's property, which has been irrigated during those same years.

In 2010, Mr. Talerico recorded the Younger Short Plat (Kittitas County File No. P-07-63) which subdivided his 5-acre parcel into five 1-acre lots. At the time, Mr. Talerico owned all 5 acres. His residence is located on what is now Lot 1 of the Younger Plat.

Up until the 2011 irrigation season, Mr. Talerico irrigated his 3.5 acres of pasture/turf by diverting from Younger Ditch, which receives its water from the Yakima River. In February 2011, Mr. Talerico, through his authorized agent Central Cascades Land Company, Inc., applied to place all of Claim No. 01279 into Ecology's Trust Water Rights Program for instream flows and water banking.

On July 8, 2011, Central Cascades Land Company took ownership of all 5 acres of the Talerico property, however Mr. Talerico continues to reside on Lot 1.

Proposed Use

The applicant proposes to change the rights confirmed to Fred Talerico under Court Claim No. 01279 to the Trust Water Right Program for the purpose of instream flow use and for water banking to offset the consumptive use associated with new groundwater uses, in accordance with WAC 173-539A, and the Trust Water Right Agreement between Ecology and Yakima River Mitigation Water Services LLC.

Other Rights Appurtenant to the Existing Place of Use

A review of Ecology's Water Rights Tracking System (WRTS) database did not reveal any other rights or claims which are appurtenant to the place of use for Claim No. 01279. However, there is a permit exempt ground water use for domestic purposes and stock watering established on Lot 1. The well was drilled in 1994 when the home was built. The well is identified by the applicant as well log ID # 114742 (which the driller likely misidentified as being in section 32 vs. 31 where Lot 1 is located).

Proposed Trust Water Right Place of Use

The proposed place of use for the trust water right is instream in the primary and secondary reaches. The primary reach is the portion of a water body that benefits from both the former consumptive use and return flow waters of the trust water right and is the reach between the original point of diversion and the point where the last return flows re-enter the stream or river. The secondary reach is that portion of a water body that benefits from the former consumptive portion of a trust water right because it had received return flow waters while the water right was exercised. The secondary reach is located downstream from the point where return flows from the historic use under the water right re-entered the stream or river.

Primary Reach

The primary reach begins at the historic point of diversion on the Yakima River (River Mile 181.8) that is approximately 750 feet south and 1150 feet east of the north quarter corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 20 North, Range 15 East, W. M., and ends at a point (River Mile 176.1) approximately 264 feet east and 133 feet south of the west quarter corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 19 North, Range 16 East, W. M.

Secondary Reach

The secondary reach begins at a point (River Mile 176.1) approximately 264 feet east and 133 feet south of the west quarter corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 19 North, Range 16 East, W. M., and continues past the confluence of the Yakima River and Teanaway River and continues down the Yakima River to its confluence with the Columbia River.

Trust Water Right Calculations

Gene St. Godard with the WNR Group completed a technical analysis of the extent and validity and consumptive use quantities of Claim No. 01279. The WNR Group used several methodologies to calculate the crop irrigation requirements (CIR), and total irrigation requirement (TIR) of the property.

Methodologies included using the Washington Irrigation Guide (WIG) and Ecology Guidance/Policy 1210, and the Blaney-Criddle Method, which is a temperature and precipitation-based method. Pasture/turf was used as the crop grown for all the methodologies. Temperature, precipitation and other lookup values were used for the town of Cle Elum located approximately two (2) miles northwest of the Talerico property (Western Climate Center Station No. 451504). Due to incomplete data at the Cle Elum station, the WNR Group did a comparison of values to the Ellensburg station (Western Climate Center Station No. 452505) for the years 2006-2009.

Washington Irrigation Guide (WIG) Method

The Washington Irrigation Guide (USDA, 1990) was developed for use in estimating historic crop water use requirements. The WIG provides technical information and procedures that can be used for planning and management of irrigation systems as well as developing quantities of crop consumptive use for various areas throughout Washington State (Appendix A of WIG). The crop use requirements are derived from a modified Blaney-Criddle method and generally use historical rainfall and precipitation data prior to 1980. The guide provides net irrigation requirements, based on long-term average climate conditions, for various crops and locations throughout the state. WNR Group notes that this data may not be truly representative of recent trends in decreased precipitation and higher temperatures, but can be used as an average crop requirement from long-term historical precipitation and temperature records. The basic inputs to the modified Blaney-Criddle method include mean monthly temperature, precipitation, and latitude.

For the Talerico property, WIG numbers were used for the area near Cle Elum, Washington. Crop irrigation requirements were used for pasture/turf, at latitude of 47.18. The irrigation season is documented beginning on June 3 and ending October 7. The following numbers were presented in the WIG:

TABLE 1: PASTURE/TURF NEAR CLE ELUM, WASHINGTON

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Mean Temp °F	26.3	32.9	37.3	44.6	52.5	59.3	66.0	64.6	56.9	46.6	35.7	29.9	
Total Precip (in)	4.14	2.46	1.91	1.27	0.77	0.70	0.27	0.59	0.81	1.63	3.51	4.59	22.65
Effective Precip (in)	0.00	0.03	0.64	0.80	0.54	0.51	0.23	0.46	0.57	0.94	0.00	0.00	4.72
Crop Requirement	0.00	0.00	0.00	0.00	0.00	3.34	6.50	4.79	3.47	0.00	0.00	0.00	18.11

TABLE 1A: PASTURE/TURF NEAR CLE ELUM, WASHINGTON (Including Blaney-Criddle numbers for April and May)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
0.00	0.00	0.00	0.73	1.16	3.34	6.50	4.79	3.47	0.00	0.00	0.00	20.00

As shown in Table 1, the net irrigation requirements for pasture/turf near Cle Elum, Washington, is 18.11 inches (1.51 feet) per acre of land (5.29 acre feet for 3.5 acres). The Talerico water right allows for irrigation from April 20 through September 30 of each year. The WIG does not credit any pasture/turf irrigation requirement for April or May.

Evaporation from the irrigation system is a documented consumptive use. For handline irrigation, an assumed evaporation rate of ten (10) percent is given (Ecology Guid-1210, 2005). Utilizing this guidance, the total consumptive use (Cu) for pasture/turf on the Talerico property, as determined by the WIG numbers is 5.82 acre feet.

Many farmers irrigate during April and May in the Cle Elum area. The WNR Group did additional Blaney-Criddle calculations for this project (and are discussed below), which showed an irrigation requirement for these months.

As shown in Table 1A, the net irrigation requirements for pasture/turf near Cle Elum, Washington is 20.0 inches (1.67 feet) per acre of land, when values are added for the months of April and May, or 5.83 acre-feet for the property. For handline irrigation, an assumed evaporation rate of ten (10) percent is given (Ecology Guid-1210, 2005). Utilizing this guidance, the total consumptive use (Cu) for pasture/turf on the Talerico property, as determined by the WIG and Blaney-Criddle numbers for the irrigation season of April 20 through September 30 is 6.42 acre feet.

Blaney-Criddle Method

The Blaney-Criddle Method (Shulz, 1989) was used by the WNR Group to estimate the Cu of the Talerico property. The Blaney-Criddle Method calculates Cu as the product of crop use coefficient (K) and consumptive use factor (F). WNR Group's calculations associated with the Blaney-Criddle Method used the following data:

- Mean monthly air temperature and mean monthly precipitation. These values were obtained from the Western Regional Climate Center web site (www.wrcc.dri.edu) for the Cle Elum, Washington station No. 451504 (updated 8/27/10). The period of record within the data base was 1931 to 2009; however data was incomplete for 2005 to 2009. Weather data was also reviewed for the Ellensburg, Washington station No. 452505 (updated 8/27/10). The period of record for this station was from 1931 through July 2010.
- Yearly monthly air temperature and mean monthly precipitation were also calculated for each of the individual years from 2000 to 2009. These values were obtained from the Western Regional Climate Center web site (www.wrcc.dri.edu) for the Cle Elum, Washington station No. 451504 and Ellensburg station No. 452505 (updated 8/29/10).
- Percent of annual daytime hours occurring for each month, which was estimated from data presented in Jensen et. al. (1969) for northern latitudes of 46 to 49 degrees. Estimation for daytime hours at latitude 47.1 was used for this analysis.
- Monthly Crop Use Coefficients, which were adapted from typical coefficients for pasture/turf crops grown in Western United States, such as those presented in Schulz (1989).
- Consumptive use calculations per acre include the amount of water required for the crops plus 5% for evaporation from the handline irrigation system.

Table 2 presents the WNR Group's inputs and calculated results for determination of consumptive use of pasture/turf in accordance with the Blaney-Criddle Method using data from the Cle Elum station No. 451504. This table utilizes the long-term average climate conditions from 1931 to 2006, for temperature and precipitation, plus the average irrigation system evaporation (5%). Based on the inputs, the WNR Group calculated that the Cu at the Talerico property for pasture/turf is 24.71 inches (or 2.06 feet) per acre of land. Irrigation of 3.5 acres would result in an annual crop net consumptive use of 7.57 acre-feet per year, including the 5% irrigation system evaporation. The Cle Elum Station did not have continuous data from 2005 through 2009, the period of evaluation for this review.

The Blaney-Criddle method was used for precipitation and temperature data for each year between 2000 and 2004. The calculated results for consumptive use of pasture/turf crops (plus irrigation system evaporation) for the Talerico property are summarized below.

TABLE 2-SUMMARY: Cle Elum Station, Blaney-Criddle Summary of Pasture/Turf Crop Consumptive Use for the Years 2000 through 2004 for the Talerico Property		
Year	Crop Consumptive Use Value in feet per acre	Total Crop Cu plus 5% system evaporation in ac-ft/yr
2000	1.884	6.93
2001	2.145	7.88
2002	2.083	7.65
2003	2.034	7.47
2004	1.931	7.10

WNR Group notes that there is no consistent temperature and precipitation data for the Cle Elum station from 2005 through 2009. There is, however, consistent data for the Ellensburg station for this time period. In order to estimate a crop consumptive use value using more current temperature and precipitation data as determined by the Blaney-Criddle method, WNR Group used the data for the Ellensburg station and applied a weighted value for Cle Elum using the Blaney-Criddle Method. Table 3 below summarizes these results.

In order to develop a consumptive use value for the Cle Elum area, WNR Group compared the complete data set for both the Cle Elum and Ellensburg stations from 2000 through 2004. The percent difference from the Ellensburg station for the years from 2000 through 2004 ranged from 1.076 to 1.274 times higher than the Cle Elum station, resulting in an average multiplier of 1.187 over the 5-year period. Utilizing this average multiplier, the most recent data was used from 2005 through 2009 at the Ellensburg station and was calculated using the Blaney-Criddle Method then divided by 1.187, resulting in an average annual consumptive use value for pasture turf in the Cle Elum area over an April 20 through September 30 irrigation season.

TABLE 3-SUMMARY: Summary of Pasture/Turf Crop Consumptive Use for the Years 2000 through 2009 for the Talerico Property.

<i>Year</i>	<i>Ellensburg Station</i>	<i>Cle Elum Station</i>	<i>Percent Difference</i>
2000	8.83	6.93	1.274
2001	8.48	7.88	1.076
2002	8.73	7.65	1.141
2003	9.08	7.47	1.216
2004	8.71	7.10	1.227
2005	8.59	7.238	1.187
2006	8.69	7.322	1.187
2007	8.75	7.373	1.187
2008	8.77	7.390	1.187
2009	9.28	7.819	1.187
Station History (1)	8.48	7.570	1.120
(1) Station history is for 1931-2006 for Cle Elum and 1931-2009 for Ellensburg.			

Summary of Consumptive Use Analysis

The following conclusions were determined from the consumptive use analysis and are summarized in Table 4.

TABLE 4: SUMMARY OF CONSUMPTIVE USE VALUES

Methodology	Net Consumptive Use Value in ac-ft/yr
WIG	5.29
WIG + Blaney-Criddle for April & May	5.83
Ecology Procedure 1210 w/ WIG Evap-10%	5.82
Ecology Procedure 1210 for April-Sept.	6.42
Blaney-Criddle (long term 1931-2006) for Cle Elum	7.57
Blaney-Criddle (long term 1931-2009) for Ellensburg	8.48
Blaney-Criddle (maximum year Cle Elum 2009)	7.82

Actual Water Use/Total Irrigation Requirement Analysis

The electrical system at the site operates multiple components, including Mr. Talerico's residence. Therefore, using power records to determine water usage was not practical. So, an estimation of water use (total site irrigation requirement) was calculated using the Washington State Department of Ecology Guidance 1210. Table 1 (page 8 of Guid-1210) was used to estimate irrigation efficiencies, and the consumptive use value of 2.234 feet/acre as determined from the Blaney-Criddle method (highest year - 2009) was used.

For the flood irrigation portion of the property, the following data was used:

$C_u = 2.234 \text{ ft/acre}$
Irrigable Area = 2.0 acres
Irrigation Efficiency = 35%

Estimated total irrigation requirement is: $2.234 \text{ ft/acre} \div 0.35 \times 2.0 \text{ acres}$, or 12.77 ac-ft/yr.

For the sprinkler irrigated portion of the property, the following data was used:

$C_u = 2.234 \text{ ft/acre}$
Irrigable Area = 1.5 acres
Irrigation Efficiency = 60%

Estimated total irrigation requirement is: $2.234 \text{ ft/acre} \div 0.60 \times 1.5 \text{ acres}$, or 5.59 ac-ft/yr.

Therefore, the total irrigation requirement, or actual water use on the 3.5 acres of pasture/turf on the property is 18.36 ac-ft/yr

Conclusion of Total Consumptive Use for the Proposed Change

Using Guidance 1210, the property owner has put approximately 87% of the full quantity of the certificate (21 ac-ft/yr) to beneficial use. The crop irrigation requirement was determined over the past 5-year period using a weighted average of the Blaney-Criddle method from the Ellensburg station to the Cle Elum area. Based on the various methodologies used to calculate the consumptive use quantity, Ecology has determined that the total irrigation requirement, or actual water use on the 3.5 acres of pasture/turf on the property is 18.36 ac-ft/yr and the consumptive use quantity is 6.0 ac-ft/yr, and is therefore available for transfer into the Trust Water Right Program for instream flows and banking.

Site soil conditions and the low irrigation efficiency of the gravity flow and sprinkler systems are assumed to account for the extra water diverted over the values identified in the consumptive use analysis done by the WNR Group. The porous sands and gravels at the site result in an increased rate of return flows to the shallow aquifer, thus requiring more water to be applied to the crop in order to meet the crop irrigation requirements.

The monthly instream flows in the secondary reach were determined on a month to month basis as average cfs and total acre-feet of consumptive use. Monthly consumptive use of acre-feet for irrigation was determined by allocating the 6.0 ac-ft/yr of total consumptive use proportionally throughout the irrigation season based on the monthly crop requirements presented in the WIG as follows: 18.4% in June, 36% in July, 26.4% in August, and 20% in September. The total amount of consumptive use each month was converted to cfs to obtain the average monthly instantaneous quantity used to augment instream flow along the secondary reach. Table 5 below shows the average and total monthly consumptive use quantities.

Table 5: Summary of Instream Flow in the Secondary Reach

	June	July	August	Sept.	Total
Average Qi (cfs)	0.02	0.04	0.03	0.02	-----
Qa (ac-ft/yr)	1.1	2.1	1.6	1.2	6

Trust Water Right Management

The consumptive use portion of the subject right is being changed to instream flow for water banking purposes. As a condition of placing these water rights into the Trust Water Right Program, the water placed into trust may be available as mitigation to address the issue of, and prevent, third-party impairment with respect to new out-of-priority water rights consistent with WAC 173-539A. The details can be viewed in the Trust Water Right Agreement between Yakima River Mitigation Water Services LLC and the Washington State Department of Ecology (attached).

When any portion of this trust water is available and not being used for water banking or other authorized purposes, those quantities will be added to the instream target flows managed by the U.S. Bureau of Reclamation at Parker and continue downstream to the Yakima River's confluence with the Columbia River. If the water is used to offset consumptive use by new water users purchasing mitigation credits from the Yakima River Mitigation Exchange, or any other new use to be mitigated by the subject right, then the trust water right will NOT be added to the instream target flows at Parker.

LEGAL EVALUATIONS

Impairment Considerations

Under RCW 90.38.040(5)(a), a trust water right may be exercised only if Ecology first determines that the authorization will not impair any other water right. Yakima River flows will be increased (or, if to mitigate out of priority consumptive uses, it will be water budget neutral with respect to TWSA) during the irrigation season as a result of cessation of irrigation of the Talerico property; therefore, impairment of other rights is anticipated.

New groundwater users seeking to rely on this water right for mitigation will be required to apply for a Water Budget Neutral Determination. This determination will include a detailed evaluation of the potential for impairment of existing rights according to WAC 173-539A-060(4)(a)-(d).

Public Interest Considerations

Pursuant to RCW 90.42.040(4)(a) exercise of a trust water right may be authorized only if the department first determines that the public interest will not be harmed. Ecology must consider how the change in purpose and acceptance into the Trust Water Right Program will affect a variety of factors such as wildlife habitat, recreation, water quality, and human health. These factors were taken into account during the consideration of this application, which allowed the author to reach the conclusion that this transfer will not be detrimental to the public interest.

RECOMMENDATION

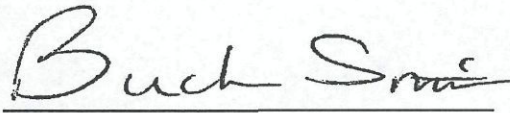
Based on the above investigation and considerations, I recommend the request for change of CS4-01279sb5c be approved in the amounts and within the limitations listed below and subject to the provisions on page 2.

Purposes of Use and Authorized Quantities

Instream flow & water banking to offset the consumptive use associated with new groundwater uses in the Yakima Basin, in the following quantities:

	June	July	August	Sept.	Total
Q _i (cfs)	0.02	0.04	0.03	0.02	-----
Q _a (ac-ft/yr)	1.1	2.1	1.6	1.2	6.0

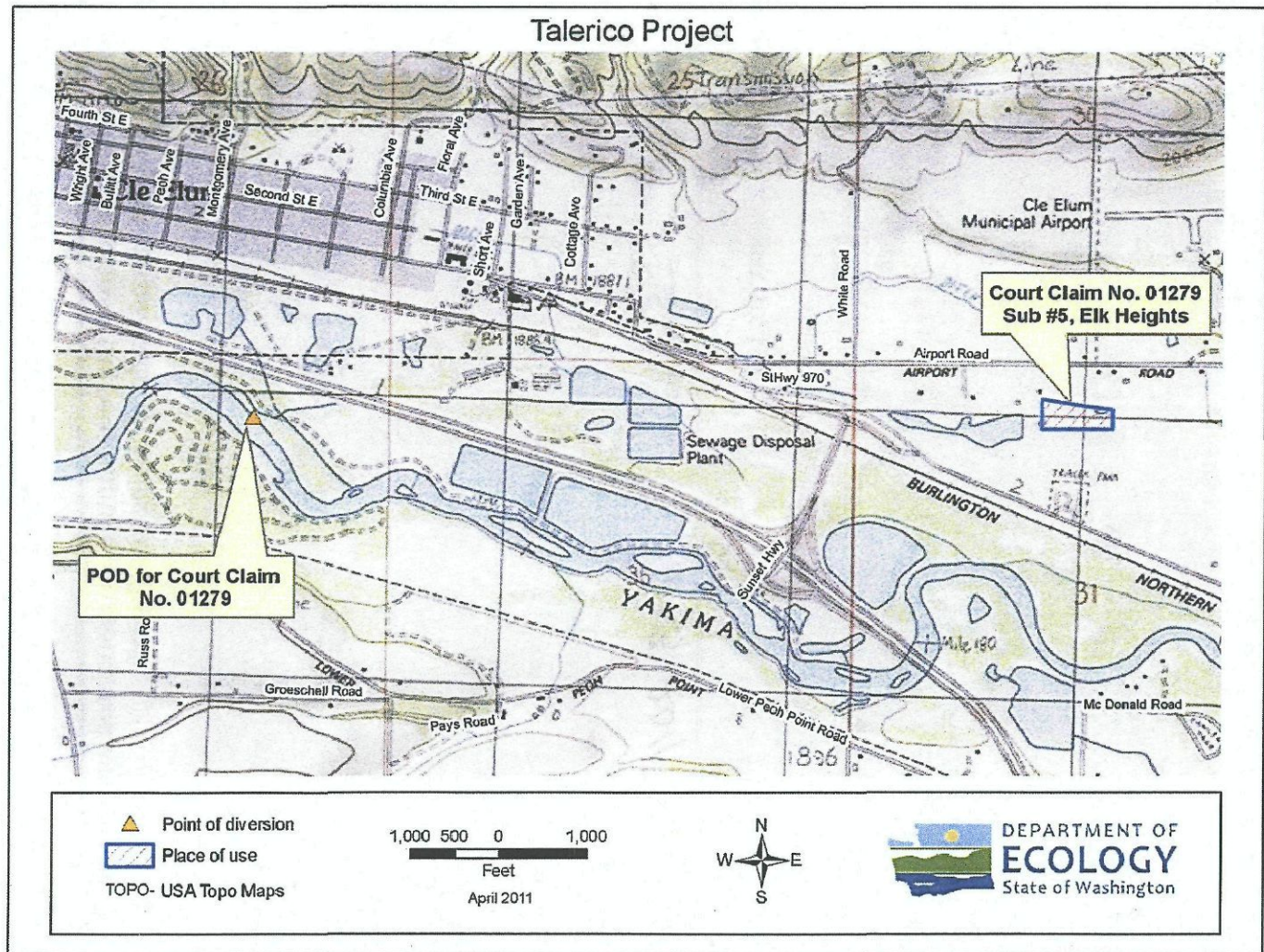
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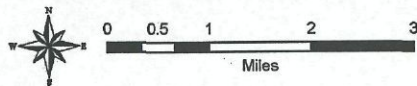
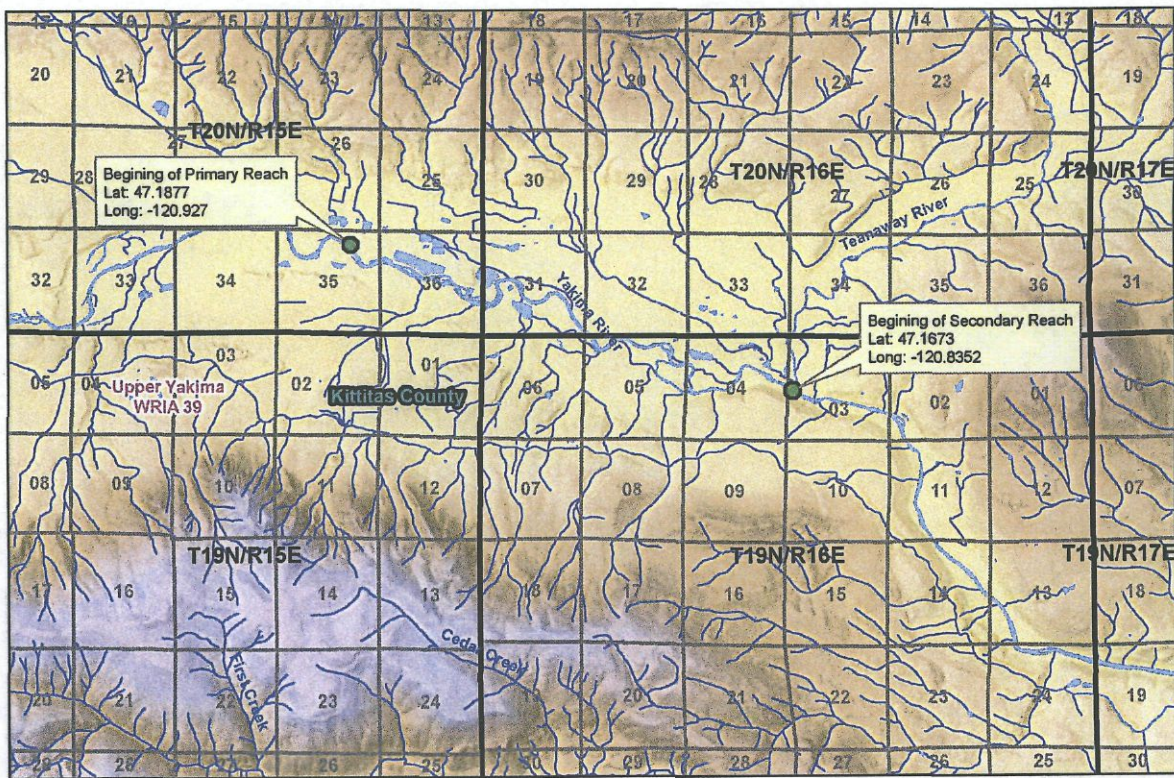


Buck Smith, LG, LHG
Licensed Hydrogeologist No. 1479

10.3.2011
Date

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Trust Water Right
CS4-01279sb5c
6/22/2011



Trust Water Right Agreement
YAKIMA RIVER MITIGATION WATER SERVICES LLC

This Trust Water Right Agreement ("Agreement") is made and entered into as of the 30 day of September, 2011, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and the YAKIMA MITIGATION WATER SERVICES LLC, a Washington Limited Liability Company ("YAKIMA MITIGATION SERVICES"), collectively, the "Parties."

RECITALS

A. Ecology is the trustee of the Yakima River Basin Trust Water Rights Program as authorized under Chapter 90.38 RCW (the "Trust"); and

B. YAKIMA MITIGATION SERVICES is the owner of certain water rights in the main stem of the Yakima River as more particularly described and quantified in **Exhibit A** (the "Water") and presently appurtenant to the land legally described in **Exhibit B** (the "Land"), each such Exhibit being attached hereto and incorporated herein; and

C. YAKIMA MITIGATION SERVICES desires to create the "YAKIMA MITIGATION SERVICES EXCHANGE" ("Exchange") by utilizing the Trust to change existing water rights that divert water from the Yakima River and its tributaries and have a priority date prior to 1905 to in stream flow and water banking. The Exchange will be defined as a bank of "Mitigation Credits." The amount of Mitigation Credits will be determined by Ecology based on the consumptive quantities in acre-feet per year of the Water changed through the Trust; and

D. The Exchange shall be available to offset impacts to senior water rights and to comply with the rules and regulations of Ecology, including the protection of Total Water Supply Available ("TWSA") under the Washington Administrative Code (WAC) Chapter 173-539A for out-of-priority water right permits and for requests for water budget neutral permit exempt ground water rights for domestic projects ("Water Rights"); and

E. YAKIMA MITIGATION SERVICES desires to have the Water Rights that are approved by Ecology for change to in stream flows and water banking purposes and placed into the Exchange ("In stream Flow Rights") to become effective as State Trust Water Rights and owned by the State at such time and in such quantity that water is applied to actual beneficial use under the Water Rights; and

F. YAKIMA MITIGATION SERVICES, or its authorized agent, submitted a Trust Water Right Application to Ecology, WRTS File No. CS4-01279sb5c (the "Application"), to place the Water into the Trust for the purpose of enhancing in-stream flows and providing Mitigation Credits to offset and allow for the permitting of new Water Rights to be used for any lawful purpose within the Yakima River basin; and

G. Ecology has accepted the Application, has completed its examination of the extent and validity of the Water and is prepared to issue its Trust Water Right Report of Examination

concerning the extent and validity of the Water (the "ROE") and its trust water certificate (the "Certificate"). **Exhibit C** documents that determination, including quantification of the consumptive quantity associated with the Water; and

H. Ecology is also prepared to issue its trust water right certificate placing the Water in the Trust for in-stream and mitigation purposes pursuant to RCW 90-38.040, provided that such certificate shall be replaced if and as reasonably necessary to comply with the final decree in *Acquavella* when issued by the Court pursuant to Pre-trial Order 17 (collectively the "Certificate"); and

I. The Parties acknowledge that YAKIMA MITIGATION SERVICES may from time to time submit additional Trust Water Right Applications to Ecology requesting additional Water to be placed in the Exchange and used as Mitigation Credits in accordance with this Agreement; and

J. Subject to the terms of this Agreement and the Application, Ecology confirms that it is willing, able and authorized to hold the Water in the Trust as provided for herein.

NOW THEREFORE, in consideration of the forgoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **PURPOSE:** The purpose of this Agreement and the primary reason YAKIMA MITIGATION SERVICES is willing to place the Water into the Trust is to provide senior water rights as off-setting mitigation that will allow YAKIMA MITIGATION SERVICES, its assigns, or third parties to apply for and receive new ground water withdrawals or surface water diversionary permits or request and receive determinations of water budget neutrality within the Yakima River basin, particularly within Kittitas County. These new Water Rights would be mitigated by way of a permanent designation of such portion of YAKIMA MITIGATION SERVICES' beneficial interest in the Water in Trust as reasonably required to ensure no impairment to TWSA or other water rights; provided that any portion of such mitigation may also be provided by other means.

2. **ADDITIONAL WATER AND MITIGATION CREDITS:** If YAKIMA MITIGATION SERVICES requests additional Water to be added to this Agreement, Ecology will consider the request and if a trust water right application is filed by YAKIMA MITIGATION SERVICES, Ecology will process the application in accordance with laws and rules pertaining to trust water rights and water banking in effect at the time of the request. Once the processing of the application is complete and upon signature of an addendum to this agreement, management of the additional Water and Mitigation Credit issuance would be performed by YAKIMA MITIGATION SERVICES and Ecology as agreed herein.

3. **THIRD PARTY AGREEMENTS – MITIGATION CREDITS:** Once this agreement is executed, YAKIMA MITIGATION SERVICES and Ecology may begin the process of designating parties to receive Mitigation Credits based upon the Water held in the Exchange. YAKIMA MITIGATION SERVICES may, in accordance with applicable laws, rules, policies and regulations, designate a temporary beneficial use for the portion of the water in Trust that is not yet assigned as Mitigation Credit pursuant to this Agreement. The process for YAKIMA MITIGATION SERVICES to identify recipients of Mitigation Credits and for Ecology to issue mitigated permits or

determinations of water budget neutrality is as follows:

3.1 In the event YAKIMA MITIGATION SERVICES proposes or enter into a contract with a third party to provide a portion of the Water in Trust as Mitigation Credits through the Exchange on such terms consistent with this Agreement as YAKIMA MITIGATION SERVICES may elect, YAKIMA MITIGATION SERVICES, its authorized agent or such third party shall make application to Ecology (or, if appropriate, to a water conservancy board) to appropriate surface or ground water at the desired location and for the intended use and quantities, together with all regularly required supporting information (hereinafter a "New Application"). As part of the New Application or water budget neutral determination request, YAKIMA MITIGATION SERVICES will designate the specific quantity of the Water in Trust that will be used as Mitigation Credits to offset the consumptive loss associated with the uses described in the New Application or water budget neutral determination request. YAKIMA MITIGATION SERVICES or its authorized agent will also co-sign the New Application or water budget neutral determination request.

3.2 Upon receipt of a complete New Application or water budget neutral determination request Ecology, pursuant to WAC 173-539A-050, shall accept and timely process it under RCW 90.03.260-.340 and Chapter 90.44 RCW utilizing such portion of the Water in Trust as Mitigation Credits reasonably needed under the quantity allocation set out in **Exhibit D** which, together with any other proposed mitigation measures, shall reasonably offset the impacts of such new withdrawal proposed in the New Application or water budget neutral determination request.

3.3. For New Applications or if otherwise required by statute, Ecology will prepare a public notice and send it to the applicant for publication in a newspaper with general circulation in the area as required by RCW 90.03.

3.4. The applicant must publish the notice for any New Applications or if otherwise required by statute, and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5. YAKIMA MITIGATION SERVICES, its authorized agent, or the third party applicant in cooperation with Ecology will, as YAKIMA MITIGATION SERVICES deems appropriate, complete a Water Transfer Working Group ("WTWG") project description and will present it to the WTWG in cooperation with Ecology. Ecology, in consultation with the U.S. Bureau of Reclamation, will determine if some or all of the Water YAKIMA MITIGATION SERVICES designates as Mitigation Credits would be assigned to the Water Storage and Exchange Contract No. 09XX101700, between the Bureau of Reclamation and Ecology, dated January 29, 2009 ("Reclamation-Ecology Exchange Contract").

3.6. Ecology will investigate the New Application or request for a determination of water budget neutrality and prepare a ROE or determination, as appropriate, recommending issuance or denial of a permit or determination of water budget neutrality based on applicable policy, rules, and law. Ecology's review of New Applications and water budget neutral requests shall also include the following considerations:

3.6.1 In order to develop and confirm performance standards as set forth in WAC 173-539A-060 and any respective ROE, YAKIMA MITIGATION SERVICES and/or such

third party shall provide information to reasonably show or estimate, as the case maybe, that the consumptive uses of the proposed project, when offset by the Mitigation Credits allocated from the Trust and any other proposed mitigation measures, do not increase the consumptive use of water.

3.7. Ecology's permit relative to a New Application or its determination of water budget neutrality will specify the conditions and limitations on the use of water in a manner consistent with the Water held in the Exchange as Mitigation Credits. Conditions relating to measuring and reporting water use and for reimbursement of any Ecology costs to administer the Reclamation-Ecology Exchange Contract will also be included in the permit or water budget neutral determination.

4. **UNCOMMITTED TRUST WATER RIGHTS:** YAKIMA MITIGATION SERVICES shall have the right at any time and for any reason without prejudice, to withdraw the Application, terminate this Agreement and remove from the Trust and the Exchange any portion of the Water that has not been permanently allocated as Mitigation Credit for other water uses as set forth in this Agreement. In the case of such termination, the provisions of Section 8 of this Agreement shall apply.

5. **ESCROW - THIRD PARTY AGREEMENTS:** In the event Ecology prepares to issue an ROE for a New Application or water budget neutral determination request, it will publish the draft ROE on its internet site. If the form and substance of the ROE or water budget neutral determination is acceptable to YAKIMA MITIGATION SERVICES and to the third party applicant, if any, YAKIMA MITIGATION SERVICES shall cause an escrow to be opened for such transaction at the Escrow Agent upon the mutual execution and deposit of the fully executed agreement between YAKIMA MITIGATION SERVICES and the third party applicant, if any, or the deposit of any other documents required for closing. Unless otherwise agreed by YAKIMA MITIGATION SERVICES, the escrow shall close within thirty (30) days of the occurrence of the last of the following events: mutual execution of all agreements and documents contemplated by or collateral to this Agreement; YAKIMA MITIGATION SERVICES' deposit of an executed document in a form acceptable to Ecology permanently allocating a portion of the then available and unallocated Water in the Exchange as Mitigation Credits for the proposed purpose of use as set forth in the New Application or water budget neutral determination request; the giving of all requisite public notices for actions contemplated by such transaction; deposit of the ROE and the new water right permit or determination of water budget neutrality, each in form and content acceptable to YAKIMA MITIGATION SERVICES and such third party, if any; the expiration of all notice, comment and appeal periods related to the full implementation of this Agreement, the ROE, and the new water right permit or determination of water budget neutrality; and the deposit of all monies, documents and things relevant and necessary to conclude the transaction between YAKIMA MITIGATION SERVICES and any third party. All escrow costs shall be shared equally between YAKIMA MITIGATION SERVICES and the third party, or as otherwise set forth in the written escrow instructions or sale agreement between YAKIMA MITIGATION SERVICES and the third party. YAKIMA MITIGATION SERVICES, and any third party having the right to do so under an agreement with YAKIMA MITIGATION SERVICES, may, at any time prior to closing of escrow and without cause, withdraw the New Application or water budget neutral determination request or otherwise prevent any allocation of any portion of the Water for Mitigation Credits for such

transaction.

6. **MANAGEMENT OF TRUST WATER:** During the Term and in its capacity as a fiduciary, Ecology shall hold and manage the Water in Trust pursuant to chapter 90.38 RCW and this Agreement as a part of the total water supply available ("TWSA") in the Yakima River. Ecology:

6.1 Shall take no position and make no assertions that the quantities and beneficial use of the Water is other than as stated in Exhibits A and B and paragraph 3 above, and this representation shall also apply to any Water removed from the Trust and the Exchange;

6.2 Shall, in addition to the protections against relinquishment in RCW 90.38 and RCW 90.42, at all times during the Term manage, maintain, preserve and protect for the benefit of YAKIMA MITIGATION SERVICES and its successors, designees and assigns all aspects and attributes of the Water, including, but not limited to, the priority date, the total diversionary right, instantaneous quantity, and annual consumptive quantity from impairment, challenges, claims and relinquishment;

6.3 Shall process all New Applications or water budget neutral determination requests where portions of the Water are proposed as Mitigation Credits and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

6.4 Shall not assess or charge YAKIMA MITIGATION SERVICES any costs or fees for maintaining the Water in the Trust and the Exchange; provided that Ecology may charge third parties its regular costs and fees for water right applications, transfers and investigations or costs attributable to processing new water right applications or water budget neutral determination requests as provided under this Agreement.

7. **REPRESENTATIONS AND WARRANTIES:** In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

7.1 YAKIMA MITIGATION SERVICES makes the following undertakings, representations and warranties to Ecology:

7.1.1 YAKIMA MITIGATION SERVICES is a Washington limited liability company duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.1.2 Upon its full execution, this Agreement is binding upon YAKIMA MITIGATION SERVICES in accordance with its terms.

7.1.3 YAKIMA MITIGATION SERVICES shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7.2 Ecology makes the following undertakings, representations and warranties to YAKIMA MITIGATION SERVICES:

7.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

7.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

7.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement, and the obligations and actions under this Agreement shall not be unlawfully withheld.

8. **TERMINATION AND DEFAULT:** If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, either party, through no fault or action by such party, should elect to terminate this Agreement or otherwise be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

8.1 As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.

8.2 Declare the Agreement null and void, whereupon the parties shall cooperate to end the Trust water right and Exchange relationship in an orderly manner as follows:

8.2.1 YAKIMA MITIGATION SERVICES shall identify all in-process designation agreements for Mitigation Credits and inform Ecology of their status; and shall work with Ecology to determine whether an assignment of Mitigation Credits should be completed from the Exchange. If Ecology agrees, the permit process or the determination of water budget neutrality will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to YAKIMA MITIGATION SERVICES or its designee the portion of the Water not yet designated and assigned as Mitigation Credits for New Applications or water budget neutral determination requests.

8.2.3 Each party shall be responsible for their own costs associated with ending the Trust water right and Exchange relationship in an orderly manner.

8.3 Pursue any other remedy now or hereafter available.

8.4 In no event shall the termination of this Agreement alter or affect any Water previously allocated for Mitigation Credits granted relative to New Applications for permits or

Mitigation Credits granted relative to requests for determinations of water budget neutrality.

9. **ASSIGNMENT:** This Agreement may be assigned by YAKIMA MITIGATION SERVICES upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

10. **NOTICES:** Any notice or communication required by this Agreement between YAKIMA MITIGATION SERVICES and Ecology shall be given to the addresses set forth below:

To ECOLOGY:

Water Resources Section Manager
Washington Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

To YAKIMA RIVER MITIGATION WATER SERVICES LLC:

Nathan R. Weis
P.O. Box 687
Roslyn, WA 98941

To CENTRAL CASCADES LAND COMPANY, INC.

Anne Watanabe
P.O. Box 687
Roslyn, WA 98941

With a copy to ENCOMPASS ENGINEERING AND SURVEYING

Marc Kirkpatrick
108 East 2nd Street
Cle Elum, WA 98922

11. **SEVERABILITY:** No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Section 8.0 herein, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. **WAIVER:** If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

13. **AMENDMENTS:** Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

14. **RECIPROCAL INDEMNIFICATION:** Each party shall protect, defend, indemnify, and hold the other harmless from and against their respective acts and omissions and for all third party claims arising out of or related to this Agreement.

15. **APPLICABLE LAW:** This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall be in Kittitas County, Washington.

This Agreement is executed as of the date first above written.

WASHINGTON DEPARTMENT OF ECOLOGY

By: Melissa Downes

Melissa Downes

Section Manager

Water Resources Program, CRO

YAKIMA RIVER MITIGATION WATER SERVICES LLC

A Washington Limited Liability Company

By: Nathan R. Weis

Nathan R. Weis, Managing Member

EXHIBIT A
Water Rights Claims

CLAIM NO. 01279

CLAIMANT NAME: Fred S. Talerico

Source: Yakima River

Use: Irrigation of 3.5 acres

Period of Use: April 20 through September 30

Quantity: 0.11 cfs; 21 acre-feet per year for irrigation and 0.125 cfs for conveyance loss

Priority Date: June 5, 1886

Place of Use: Beginning at the north quarter corner of Section 31, T. 20 N., R. 16 E., W.M.; thence East along the north section line of said Section 31, 305 feet; thence South 0° 32' 39" West 487.70 feet to the true point of beginning; thence continuing South 0° 32' 39" West 218.36 feet; thence South 89° 47' 15" West 787.79 feet; thence North 0° 32' 19" East 334.32 feet; thence South 81° 48' 57" East 794.88 feet to the point of beginning.

Limitation of Use: In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cubic feet per second (cfs).

EXHIBIT B
Legal for Land Appurtenant to Claim No. 01279

Lots 1, 2, 3, 4, and 5 of the YOUNGER PLAT, according to the Plat recorded in volume 11 of Plats at page(s) 243-244, on April 21, 2010, Kittitas County Auditor's File No. 201004210025, being a portion of the Northwest Quarter of the Northeast Quarter of the Northwest of Section 31, Township 20 North, Range 16 East, W.M., Kittitas County, State of Washington.

TOGETHER WITH that certain easement for purposes of ingress and egress over the following described property:

The westerly 60 feet, of even width, of Parcel 4 of GRM Short Plat No. 1 being a portion of the Northwest Quarter of Section 31, Township 20 North, Range 16 East, W.M., Kittitas County, State of Washington, as recorded under Survey, recorded under Kittitas County Auditor's File No. 542182 as granted in instrument under recording No. 553808.

EXHIBIT C
Ecology Report of Examination and Trust Water Certificate

EXHIBIT D **Quantity Allocation CU Calculator**

	A	B	C	D	E	F	G	H	I	J	K									
1	Consumptive Water Use Calculator																			
2																				
3																				
4	Percentage of Water Consumed by Rule																			
5	<table border="1"> <thead> <tr> <th>Water Use</th> <th>% Consumed</th> </tr> </thead> <tbody> <tr> <td>In-house Use with a On-site Septic System</td> <td>30%</td> </tr> <tr> <td>In-house Use Hooked up to a Sanitary Septic System</td> <td>20%</td> </tr> <tr> <td>Outdoor Use (Irrigation)</td> <td>90%</td> </tr> </tbody> </table>											Water Use	% Consumed	In-house Use with a On-site Septic System	30%	In-house Use Hooked up to a Sanitary Septic System	20%	Outdoor Use (Irrigation)	90%	
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8																				
9																				
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18	<p>* This value is a default value based on Dept of Health minimum service</p> <p>** This value is based on an irrigation requirement for pastureland in the Cle Elum area and an irrigation efficiency of 80% consistent with WAC 173-533A.</p>																			
19																				